IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

Crl.MC.No. 659 of 2007()

CRMP.373/2007 of J.F.C.M. COURT-I, PERINTHALMANNA

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PETITIONER:

MOHAMMED SHIHAB.P.K, S/O KUNHIPOKKU,
KOOTTAPULAKKAL HOUSE, VALAPURAM P.O.,
PULAMANTHOLE, MALAPPURAM DISTRICT.

BY ADV. SRI.DEVIDAS.U.K

RESPONDENTS:

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1. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. THE REVENUE DIVISIONAL OFFICER,
PERINTALMANNA.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 659 OF 2007

Dated this the 14th day of March, 2007

ORDER

The petitioner is aggrieved by Condition No.2 imposed on him when a vehicle belonging to him was directed to be released to him. The said vehicle is allegedly involved in illicit transportation of river sand. By the said condition, the learned Magistrate directed that the petitioner must deposit an amount of Rs.25,000/- before claiming release of the vehicle.

2. The learned counsel for the petitioner submits that the said condition is absolutely unnecessary and unjustified. The petitioner has been directed already to execute a bond for Rs.1 lakh with two solvent sureties. That condition sufficiently protects the interests of the State. The petitioner is poor and indigent. He is unable to raise the amount of Rs.25,000/- to make cash deposit. In these circumstances, the petitioner has been unable to take advantage of the order dated 12/2/07. The vehicle is exposed to sun and rain

unnecessarily. It is suffering damage and deterioration. The learned counsel wants this Court to take note of the fact that the petitioner's vehicle is even allegedly not involved earlier in any other similar crime. In support of this contention, he relies on the objections filed by the revenue official to his application for release of the vehicle. Admittedly, no order has been passed by the District Collector under the relevant Rule 27 of the Protection of River Banks and Regulation of Removal of Sand Rules, 2002. The petitioner is willing to undertake to pay the amount which may be legally found to be due and payable from him by the District Collector under Rule 27 of the Rules. In these circumstances, the unfortunate consequence of the vehicle deteriorating in custody of the officials may be avoided. The Supreme Court decision in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638) which reveals the anxiety of the system to avoid such unnecessary damage and deterioration of the properties involved in criminal cases is also brought to my notice by the learned counsel.

3. Having considered all the relevant inputs, I am satisfied that it is not necessary to insist on imposition of the condition of cash deposit of Rs.25,000/-. Condition No.1 imposed shall

adequately take care of the situation. The petitioner must, in the bond to be executed, undertake before the learned Magistrate that he shall, subject to the avenues of challenge which are available to him, deposit the amount which may be payable by him as per the order of the District Collector. The bond to be executed shall secure such amount also.

4. In these circumstances, this Crl.M.C. is allowed to the above extent. Condition No.2 shall stand deleted. In the bond to be executed, the petitioner shall undertake that the amounts which may be found due and payable in accordance with law under Rule 27 of the Rules shall be paid by him to the District Collector as and when directed.

Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge